

FILED

MAY 29 2015

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTYUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GARRY L McCue

Civil No. 15CV1092 BTM (KSC)

REQUEST FOR ~~subject matter~~ **Jurisdiction**THE CIVIL RIGHTS
ACT OF 1964, 42 U.S.C. 2000e 5(f)(1);
DECLARATION IN SUPPORT OF

Kabatec

v.

Brown
KHOENIG POLLARD
DEBBIE LEWIS OF
SHAWN KHOENIG25936 Age, Race, Color
2006, 200d. Co. V. US. CTCL
1967, 387, F.2d 657 181 CTCL
170 Commerce 152 13431. I, the plaintiff in the ~~Motion to Amend~~ **Motion to Amend** discrimination action, request that the

court should Amend its Finding of Fact, A, Argument.

1. NOTICE of INELIGIBILITY. Date 5/14/09. NO Age mention
GATE COMMITTEE. REVIEW. 2. Extraordinary Injury Payment
Letter sent. 05/14/09 Regarding Ineligibility. after a
see Full Review by The Gate Committee it was determined
still Ineligible. 7/16/09. Letter from Kabatec Brown
Kendrick Igoton 2/25/13. on 7/16/09 Because of my
Age and Color. now Im. no more. INELIGIBILITY
Listed at REASONS That was fine went Mr Garry
McCue was Look as a old white male
on 7/16/09 was Im 42 years **Back then**
now I do not meet gate Eligibility Requirement

MAY 29 2015

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
RECEIVED

1 Ex. 1 Order GRANTING F.P.D

2 2, CIVIL ACTION

3 3 2000d 2000d1

4 SUBCHAPTER V FEDERALLY ASSISTED PROGRAMS
5 42:431 - 434

6 5, ACTION FOR DAMAGES OR OTHER RELIEF
7 {28 USC {1348 see also 42 13821

8 6 CLAIMS ADMINISTRATOR NOTICE
9 OF INELIGIBILITY.

10 7 Letter to me on 2/28/13

11 8, Letter on 8/6/07

12 9 Letter on 11/16/07

13 on 1/11/08

14 on 7/16/09

15 Dater Letter on 8/19/07

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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 GARRY L. MCCUE,

12 Plaintiff,

Case No. 15cv1092 BTM(KSC)

**ORDER GRANTING IFP AND
DISMISSING CASE**

13
14 v.

15 SHAWN KHORRAMI, BAHAR
16 DEJBAN, LAW OFFICES OF
17 SHAWN KHORRAMI.

Defendants,
18

19 On May 14, 2015 Plaintiff Garry L. McCue ("Plaintiff") filed a Complaint
20 and concurrent Motion for Leave to Proceed *in forma pauperis* ("IFP Motion"),
21 42 U.S.C. § 3604 (F)(3)(A), against the Defendants Shawn Khorrami, Bahar
22 Dejban, and the Law Offices of Shawn Khorrami. For the reasons discussed
23 below, the IFP Motion is GRANTED and the Complaint is DISMISSED with
24 leave to amend.

25 **DISCUSSION**

26 **I. Motion to Proceed IFP**

27 Upon review of Plaintiff's affidavit in support of his IFP Motion and
28 supporting documents, the Court finds that Plaintiff receives Supplemental

1 Security Income and has made a sufficient showing of inability to pay the filing
2 fees required to prosecute this action. Accordingly, Plaintiff's IFP Motion is
3 **GRANTED.**

4 **II. Lack of Subject Matter Jurisdiction**

5 Although the Court will allow Plaintiff to proceed IFP, Plaintiff's Complaint
6 must be dismissed for lack of subject matter jurisdiction.

7 Plaintiff's Complaint suffers from several defects. First, although
8 Plaintiff's Civil Cover Sheet suggests that the Court has jurisdiction over this
9 action because there is both a U.S. Government plaintiff and defendant, further
10 analysis of the pleadings reveals this not to be the case (Dkt. No. 1, 1-1.) It is
11 also clear from the Complaint that the Court lacks federal question jurisdiction
12 or diversity jurisdiction over this matter.

13 First, Plaintiff marked the nature of the suit on the Civil Cover Sheet as
14 "personal injury- medical malpractice." (Dkt. No. 1-1.) Plaintiff appears to be
15 suing his current or former attorneys for allegedly mishandling his receipt of
16 compensation from an unrelated medical lawsuit settlement pending in the
17 Superior Court for the County of Los Angeles (Dkt. No. 1, at 5.) Plaintiff's
18 cause of action appears to arise under state tort law and does not require
19 resolution of a substantial question of federal law. Therefore, Plaintiff's case
20 fails to establish federal question jurisdiction.

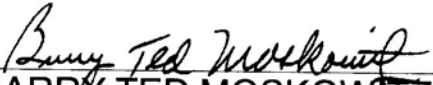
21 Second, the Court has no basis for concluding that diversity jurisdiction
22 exists. 28 U.S.C. § 1332(a). According to the Complaint and attached exhibits,
23 Plaintiff appears to be a citizen of California residing in San Diego County (Dkt.
24 No. 1, at 5.) Plaintiff does not allege that Defendants are diverse from him, nor
25 does he state their state of residence, incorporation or principal place of
26 business. However, it appears that Defendant Law Offices of Shawn Khorrami
27 maintains its place of business in Van Nuys, California. (Dkt. No. 1, at 5).
28 Therefore, complete diversity between the parties is lacking.

CONCLUSION

For the reasons discussed above, Plaintiff's IFP Motion is **GRANTED** and the Complaint is **DISMISSED**. Plaintiff has leave to amend the Complaint to satisfy subject matter jurisdiction and shall file an amended complaint within 30 days of the entry of this order.

IT IS SO ORDERED.

DATED: May 20, 2015


BARRY TED MOSKOWITZ, Chief Judge
United States District Court

Garry McCue
7761 Belden Street
San Diego, CA 92111

JURISDICTION AND VENUE Part 4

Ch. 85 DISTRICT COURT JURISDICTION

28 § 1336

Note 9

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1. Construction

This section giving district courts jurisdiction to enforce or enjoin "any order of the Commission for the payment of money or the collection of fines, penalties and forfeitures" should be interpreted narrowly, in accordance with usual presumption that direct review of administrative action belongs in Court of Appeals.

2. Power of Congress

Congress has plenary power to regulate commerce among the states and, therefore, had full power to create the Interstate Commerce Commission and to prescribe its duties and to give it such powers as necessary to accomplish its purpose, even though they might override powers otherwise belonging to the states, and Congress also had full power to prescribe limitations on reviews and appeals from commission's action. *Simpson v. South Western Railroad Company*, C.A.5 (Ga.) 1956, 231 F.2d 59, certiorari denied 77 S.Ct. 41, 352 U.S. 828, 1 L.Ed.2d 50.

3. Construction with other laws

Jurisdiction of Courts of Appeals to review Commission rules, regulations and orders and jurisdiction of federal district courts to review Commission orders "for the payment of money or the collection of fines, penalties, and forfeitures" are mutually exclusive, but Courts of Appeals may directly review Commission order for payment of money if it also involves other types of relief. *Pullman-Standard, a Div. of Pullman Inc. v. I.C.C.*, C.A.7 (Ill.) 1983, 705 F.2d 875.

Nothing in legislative history of 1975 amendment to this section and sections 2321 and 2342 of this title indicates intention to vest in courts of appeals any jurisdiction with respect to Interstate Commerce Commission orders other than the jurisdiction previously exercised by three-judge district courts, and single-judge district courts retain jurisdiction to enjoin or suspend ICC orders for payment of money or collection of fines. *Island Creek Coal Sales Co. v. I. C. C.*, C.A.6 1977, 561 F.2d 1219. Federal Courts § 1141

4. Construction with Federal Rules of Appellate Procedure

Federal Rules of Appellate Procedure and rule of appellate procedure for appeals as of right did not apply to steel company's appeal from Interstate Commerce Commission's denial of challenge to railroad company's rates as unreasonable. *Burlington Northern, Inc. v. Northwestern Steel & Wire Co.*, C.A.7 (Ill.) 1986, 794 F.2d 1000.

sons faced with threat of irreparable injury through exposure to liability for mounting penalties awaiting commencement of enforcement proceedings. *I. C. C. v. Atlantic Coast Line R. Co.*, U.S.Fl. 1966, 86 S.Ct. 1000, 383 U.S. 576, 16 L.Ed.2d 109.

6. Power of Congress distinguished

Jurisdiction of federal district court under statutes relating to commerce is not coextensive with power of Congress. *McFaddin Exp., Inc. v. Adley Corp.*, D.C.Conn.1965, 240 F.Supp. 791, affirmed 346 F.2d 424, certiorari denied 86 S.Ct. 643, 382 U.S. 1026, 15 L.Ed.2d 539.

7. Civil action

Words "civil action", as used in this section and § 1398 of this title, do not require a party challenging a Commission order to institute an entirely new action by filing a separate petition against the Commission in the Court of Claims and by pursuing the new action to conclusion before original case is reopened; the more sensible reading of said sections shows that Congress used such term simply to distinguish it from a "criminal action" and that nothing more should be inferred from the term. *McLean Trucking Co. v. U. S.*, Ct.Cl.1967, 387 F.2d 657, 181 Ct.Cl. 170. Commerce § 152

8. Enforcement orders—Generally

Federal district court was limited, under this section, to enforcing order of Interstate Commerce Commission for merger of motor carriers, and had no power to expand and supplement order, and where it had been found upon hearing that there would be no substantial adverse effect upon employees and where there had been compliance with applicable collective bargaining agreements, court would not go further to include guarantee of affirmative action to protect interests of employees. *Walters v. Roadway Exp., Inc.*, C.A.5 (Miss.) 1980, 622 F.2d 162.

9. — Approval of management contracts, enforcement orders

Commission order approving temporary management contract between certi-

PUBLIC HEALTH AND WELFARE Ch. 21

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A—INSTITUTIONALIZED PERSONS

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B II—PUBLIC ACCOMMODATIONS

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cy.
ainst deprivation of, interference with, and pun-
exercising rights and privileges secured by section
00a-1 of this title.
or injunctive relief.
elations Service; investigations and hearings; ex-
ion; release of testimony; duty to bring about
ttlements.
Attorney General

Ch. 21 CIVIL RIGHTS

Sec.

SUBCHAPTER III—PUBLIC FACILITIES

- 2000b. Civil actions by the Attorney General.
- 2000b-1. Liability of United States for costs and attorney's fee.
- 2000b-2. Personal suits for relief against discrimination in public facilities.
- 2000b-3. "Complaint" defined.

SUBCHAPTER IV—PUBLIC EDUCATION

- 2000c. Definitions.
- 2000c-1. Omitted.
- 2000c-2. Technical assistance in preparation, adoption, and implementation of plans for desegregation of public schools.
- 2000c-3. Training institutes; stipends; travel allowances.
- 2000c-4. Grants for inservice training in dealing with and for employment of specialists to advise in problems incident to desegregation; factors for consideration in making grants and fixing amounts, terms, and conditions.
- 2000c-5. Payments; adjustments; advances or reimbursement; installments.
- 2000c-6. Civil actions by the Attorney General.
- 2000c-7. Liability of United States for costs.
- 2000c-8. Personal suits for relief against discrimination in public education.
- 2000c-9. Classification and assignment.

SUBCHAPTER V—FEDERALLY ASSISTED PROGRAMS

- 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under Federally assisted programs on ground of race, color, or national origin. *see 42*
- 2000d-1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action.
- 2000d-2. Judicial review; administrative procedure provisions.
- 2000d-3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment.
- 2000d-4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty.
- 2000d-4a. "Program or activity" and "program" defined.
- 2000d-5. Prohibited deferral of action on applications by local educational agencies seeking federal Funds for alleged noncompliance with Civil Rights Act.
- 2000d-6. Policy of United States as to application of nondiscrimination provisions in schools of local educational agencies.
- 2000d-7. Civil rights remedies equalization.

SUBCHAPTER VI—EQUAL EMPLOYMENT OPPORTUNITIES

[2:428 — 2:437]

U.S. alleging that Dutch, British and Nigerian corporations aided and abetted Nigerian government in committing violations of Nigerian law not cognizable under ATS; see also ¶12:11.1]

Claims under the ATS do not “touch and concern” the U.S. simply because defendants are citizens of, or present in, this country. [*Mastafa v. Chevron Corp.*, supra, 770 F3d at 188 (collecting cases); *Mujica v. AirScan Inc.* (9th Cir. 2014) 771 F3d 580, 591 (2014 WL 5839817, *8)—no ATS jurisdiction over two U.S. corporations for alleged complicity in bombing of Columbian village; compare *Al Shimari v. CACI Premier Technology, Inc.* (4th Cir. 2014) 758 F3d 516, 530-531—ATS claims “touched and concerned” U.S. where contract made here]

[2:428-429] *Reserved.*

- 6) [2:430] **Compare—attachment of property:** Property of a *foreign state* located in the U.S. is immune from attachment or execution *unless the property* is “used for a commercial activity” in the U.S. [28 USC §1610(a); see *Af-Cap, Inc. v. Chevron Overseas (Congo) Ltd.* (9th Cir. 2007) 475 F3d 1080, 1091—“used for” means put into service for commercial activity (mere use in connection with or in relation to commercial activity not sufficient)]

No such immunity applies, however, to property of an *agency or instrumentality* of a foreign state that is “engaged in commercial activity” (28 USC §1610(b)). [See *Ministry of Defense & Support for Armed Forces of Islamic Republic of Iran v. Elahi* (2006) 546 US 450, 452, 126 S.Ct. 1193, 1194]

[2:431-434] *Reserved.*

- (h) [2:435] **Civil rights:** Actions for damages or other relief because of deprivation of civil rights, including the right to vote. [28 USC §1343; see also 42 USC §13981 (e)(3) (civil rights for women)]

- (i) [2:436] **Federal taxes:** [28 USC §1340]

- (j) [2:437] **Bankruptcy:** District courts have original jurisdiction in civil proceedings arising under Title 11 (Bank-

V2081	CLAIMS ADMINISTRATOR NOTICE OF INELIGIBILITY AFTER RECEIPT OF ADDITIONAL CLAIMS MATERIAL (Date of Notice: 5/14/09)		
I. CLAIMANT INFORMATION			
Claimant Name	McCue, Gary	VCN	1046225
Law Firm	Kabateck Brown Kellner		
Primary Injury:	MI	Date of Event:	7/5/01
II. CLAIMS ADMINISTRATOR DETERMINATION FOLLOWING REVIEW OF ADDITIONAL MATERIALS			
This is an official Notification from BrownGreer PLC, the Vioxx Claims Administrator. After reviewing the additional claims material submitted in support of the claim, the Claims Administrator has determined that this claim does not meet the Eligibility Requirements for the Program because it does not pass the following Gate(s):			
1.	Injury	<input checked="" type="checkbox"/>	
2.	Duration	<input checked="" type="checkbox"/>	
3.	Proximity	<input checked="" type="checkbox"/>	
III. STATUS OF REQUIRED PME RECORDS			
Section 1.3.1 and, by reference, Exhibit 1.3.1 require PME records, which, for eligibility determinations include a completed Claims Form, Event Records and Proof of Vioxx Use. If any of the boxes in this section is checked, it is because the Claims Administrator has determined that your Claims Package did not include those required records. Without a completed Claims Form and both Event Records and Proof of Use, a claim may not pass the Eligibility Requirements.			
4.	No Event Records Submitted for Claimed Injury	<input checked="" type="checkbox"/>	
5.	No Proof of Use Submitted	<input type="checkbox"/>	
6.	No Asserted Injury Date on Claims Form	<input type="checkbox"/>	
IV. STATUS OF CLAIMS FOLLOWING REVIEW OF ADDITIONAL MATERIALS			
The Claims Administrator has reviewed all newly submitted information and has determined the claim to be ineligible. We will send the claim and all information you have submitted to the Gate Committee, pursuant to Section 2.5 of the Settlement Agreement. Submission of your claim to the Gate Committee is automatic and requires no further response or action on your part.			
V. GATE COMMITTEE REVIEW			
The Gate Committee is comprised of three representatives appointed by Merck and three representatives appointed by the Negotiating Plaintiffs' Counsel. The Gate Committee will review your submitted Claims Package and determine if you should be deemed a Qualifying Program Claimant who is eligible to receive benefits in the Settlement Program. If a majority of the Gate Committee decides that your claim is eligible, the Claims Administrator will notify you of that result and will then review the claim for Points Assessment. If the Gate Committee decides that your claim is not eligible, the Claims Administrator will send you a <i>Gate Committee Notice of Ineligibility</i> , which will outline the options available to you under the Settlement Agreement.			



February 25, 2013

VIA U.S. MAIL

Garry L. McCue
7761 Belden St. Apt. No. 86
San Diego, CA 92111

***Re: Garry L. McCue v. Merck and Company Inc.; McKesson Corporation
Questions on the Vioxx Settlement***

Dear Mr. McCue:

I am writing you in response to recent questions, you have asked about your Vioxx claim and lawsuit. On February 8, 2013, you sent a letter to, Jose Rodriguez, one of our firm's paralegals, containing medical records and a letter stating that you have concerns regarding your Vioxx lawsuit.

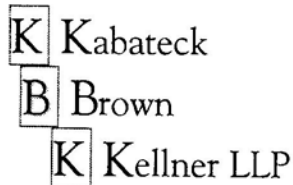
I am enclosing a copy of your entire file. These documents include "Release of All Claims," which was signed by you and also notarized on January 14, 2008. The Release of All Claims authorized our office to agree to the settlement proposed by defendant Merck in the Vioxx litigation on your behalf. Moreover, it was determined by independent retired judges, that your claim did not qualify under the terms of the settlement. Indeed, you were advised that you would not qualify under the settlement and that this would mean that you would not receive any benefits under the settlement in various correspondence, including the following:

- May 14, 2009 Letter Regarding Ineligibility (enclosed)

A letter was sent to you on May 14, 2009 regarding your ineligibility to qualify under the settlement. It was explained that we had filed an appeal on your behalf and that your claim was submitted for re-evaluation for eligibility by the Gates Review Committee.

- July 16, 2009 Letter Regarding the Appeal (enclosed)

After completion of the second full review by the Gates Committee it was determined that your claim was still ineligible and a second letter was mailed to you on July 16, 2009 explaining the results of the appeal and the determination reached by the Gates Committee.



644 South Figueroa Street
Los Angeles, CA 90017
Tel: (213) 217-5000 Fax (213) 217-5010
www.kbklawyers.com

The Law Offices of Shawn Khorrami

444 South Flower Street, 33rd Floor
Los Angeles, CA 90017
Tel: 213.596.6000 Fax: 213.596.6010
www.khorrami.com

August 6, 2007

ATTORNEY- CLIENT PRIVILEGED
CONFIDENTIAL COMMUNICATION

MCCUE, Gary
5852 Duluth Street
San Diego, CA 92114

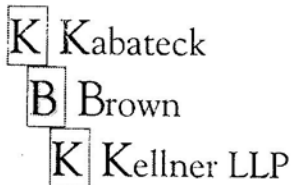
Re: Vioxx Litigation Update

Dear Client:

I am writing to you on behalf of Kabateck Brown Kellner LLP ("KBK") and the Law Offices of Shawn Khorrami ("Khorrami"), the law firms representing you in your case against Merck.

As you may be aware, numerous Vioxx trials have taken place around the country with mixed results from the plaintiffs' perspective. Juries have found in favor of defendant Merck ten times and in favor of plaintiffs five times. Currently Merck's stated public position is that they will try every single case. While that position may be unrealistic, nevertheless the fact remains that plaintiffs must be prepared for trial whenever their cases are selected by the Court.

Two trials have taken place in California (the jurisdiction in which your case has been filed) with numerous others scheduled to take place over the next two years. In August 2006, a jury found in favor of defendant Merck in a case involving a 71 year-old man that had taken Vioxx for over two years and suffered a heart attack in 2001. In January 2007, a jury was unable to reach a verdict in a case involving two plaintiffs – a 77 year-old man that took Vioxx for almost five months and suffered a heart attack in March 2002, and a 56 year-old man who had a heart attack in December 2000 after more than eighteen months of Vioxx use. A mistrial was declared and the case involving those same two plaintiffs is set for retrial on October 1, 2007.



644 S. Figueroa St.
Los Angeles, CA 90017
Tel: (213) 217-5000 Fax (213) 217-5010
www.kbklawyers.com

KHORRAMI POLLARD & ABIR, LLP

444 Flower St., 33rd Floor
Los Angeles, CA 90071
Tel: 213.596.6000 Fax: 213.596.6010
www.khorrami.com

November 16, 2007

ATTORNEY- CLIENT PRIVILEGED CONFIDENTIAL COMMUNICATION

MCCUE, Gary
5852 Duluth Street
San Diego, CA 92114

Re: In Re Vioxx Products Liability Litigation

Dear Client:

We are extremely pleased to personally advise you that Merck has offered to globally settle a portion of the pending Vioxx cases. This multi-billion dollar settlement offer is the result of years of hard work by our law firms, along with scores of other law firms that have aggressively litigated this case on your behalf. Even though there has been a great deal of media coverage of this settlement offer, we understand that you may have a number of questions about how this potential settlement affects your case and the timing of when your case will be finalized.

WHAT CAN I EXPECT FROM HERE?

Your case has not yet been officially settled. We are in the process of evaluating your cases on an individual basis to determine whether the settlement offer represents a fair offer. To that end, we are extremely encouraged by the size of the global settlement offer (\$4.85 billion). As you can imagine, the determination of how the \$4.85 billion will be split among the tens of thousands of Vioxx plaintiffs is very complicated and will be based upon an evaluation of each case's relative merit.

Merck is limiting its offer to settle to heart attack and certain types of stroke cases. For those cases that are covered by the settlement offer, a complicated formula has been proposed to determine the distribution of settlement proceeds, including the nature and severity of the injury, the extent of Vioxx usage, and the health and family medical history for each plaintiffs. As a result, it is critical that we promptly receive all pertinent medical and pharmacy records so we can maximize your recovery if you qualify and agree to participate in the settlement.



KHORRAMI POLLARD & ABIR LLP

Attorneys At Law

PERSONAL & CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED

January 11, 2008

Gary McCue
5852 Duluth Street
San Diego, CA 92114

Re: *Vioxx Settlement*

Dear Gary McCue:

I am writing on behalf of the law firms of Khorrami Pollard & Abir LLP and Kabateck Brown Kellner LLP, who represent you in this litigation. Anthony Salinas, the client relations clerk assigned to your case, will contact you after you receive this package to give you important information and answer your questions. Anthony Salinas's direct number is: 213 596 6536 and email address is Asalinas@kpalawyers.com.

Enclosed are documents of the utmost importance to your case. If you fail to follow our specific instructions, your claim **WILL** be **DISMISSED**. The document entitled Release of All Claims **MUST** be signed in the presence of a notary. A representative from the notary company which we have hired will contact you within 3 to 4 days of your receipt of this package to make arrangements to meet with you. At that meeting ALL of the signed documents must be given to the Notary.

- **RECOMMENDATION OF SETTLEMENT:** A presentation of the arguments in favor of accepting this settlement. Please read, and sign on page 4, and give to the notary.
- **RELEASE OF ALL CLAIMS:** DO NOT SIGN this document on page 9 until the notary is present with you. Please read carefully.
- **AUTHORIZATION FOR RELEASE OF MEDICAL AND/OR EMPLOYMENT RECORDS:** Please read, sign, and give the entire document to the notary.

The Court will strictly enforce the deadlines of this Settlement Agreement and **WILL DISMISS YOUR CASE** if you fail to comply. These documents **MUST** be signed, notarized, and returned to our office within **14 DAYS** of the date of this letter, so it is imperative that you set a meeting with the Notary as soon as he or she contacts you. We thank you for your cooperation.

Sincerely,

KHORRAMI POLLARD & ABIR LLP

By:

JAMES KENNA, ESQ.

Shawn Khorrami

Dylan Pollard

Danny Abir

Matt C. Bailey

Bahar Dejban

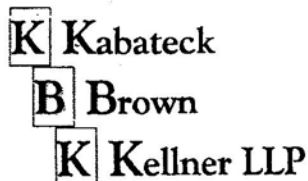
Nancy Gardner

James Kenna

Sonia Tandon

Analissa Ward

Charles G. Brown
Of Counsel



644 So. Figueroa Street
Los Angeles, CA 90017
Tel: (213) 217-5000 Fax (213) 217-5010
www.kbklawyers.com

KHORRAMI POLLARD & ABIR LLP

444 South Flower Street, 33rd Floor
Los Angeles, CA 90071
Tel: 213.596.6000 Fax: 213.596.6010
www.kpalawyers.com

PERSONAL & CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

July 16, 2009

Gary McCue
5852 Duluth Street
San Diego, CA 92114

Re: Vioxx Products Liability Litigation
GATE COMMITTEE NOTICE OF INELIGIBILITY

Dear Gary McCue:

As you know from previous correspondence, your claim was determined to have failed one or more "Gates requirements". On your behalf, we appealed the decision to the Gates Committee in hope that they would reconsider their decision and award compensation for your claim.

After completing a second full review of your records, the Gates Committee at Brown Greer PLC, claims administrator for the Vioxx settlement, has determined that your claim continues to fail one or more of the Gates and does not meet the Eligibility Requirement for the Settlement Program. We have enclosed your ineligibility notice from the Gates Committee. Brown Greer PLC has listed the following reasons for ineligibility:

- **INJURY:** Your Injury does not satisfy the Injury criteria as defined by Section 2.2.1.1. of the Vioxx Settlement Agreement dated November 9, 2007.
- **DURATION:** Your records fail to establish the requisite Duration of usage as defined by Section 2.2.1.2. of the Vioxx Settlement Agreement dated November 9, 2007
- **PROXIMITY:** Your records fail to establish the requisite Proximity of usage as defined by Section 2.2.1.3. of the Vioxx Settlement Agreement dated November 9, 2007.

RAVINDRA PRABHU MD FACC

DIPLOMATE CARDIOVASCULAR DISEASES AND CRITICAL CARE

4065 THIRD AVENUE
SUITE 101
SAN DIEGO, CALIFORNIA 92103
(619) 298-9526

750 MEDICAL CENTER COURT
SUITE 3
CHULA VISTA, CALIFORNIA 91911
(619) 482-0112

Albert Sharf, M.D.
655 Euclid Avenue, #205
National City, CA 91950

August 19, 2002

Re: Garry McCue

Dear Albert,

I saw Mr. McCue in consultation. He is a 43-year-old gentleman with a history of a permanent pacemaker implanted on 08/14/01. The patient was in the hospital for surgery for suspected intestinal obstruction from adhesions. Preoperative evaluation showed what the patient describes as complete heart block. A pacemaker was inserted. The atrial lead apparently malfunctioned one month later. Dr. Robinson, who was the original implanter, apparently "did not want to reposition the lead". The patient has had apparently constant chest pains since the time of the pacemaker insertion. However, upon asking, it appears that the pain is related to pacing stimulation. I specifically asked him whether the pain is due to diaphragmatic stimulation or contraction or hiccuping, etc., but the patient denies that. His pacemaker was turned down to a rate of 40 beats per minute and thus the episodes have significantly diminished. However, he does feel pains at night while sleeping, presumably because the rate drops down sufficiently for the pacemaker to come through. During the pacing episode, he also feels a swelling in the neck. So far, no additional adjustment has been helpful in relieving his symptoms. A pacemaker syndrome has been suspected and the patient is here to see if anything can be done to relieve his symptoms.

Past Medical History: 1) History of multiple arthritic problems or orthopedic problems including chronic dislocation of the right shoulder and chronic problems with the right knee. 2) History of bilateral carpal tunnel syndrome. 3) History of almost total blindness in the right eye from glaucoma. The patient has been declared disabled since 1998. 4) History of hypertension.

Family History: Father is 82 and has diabetes. Mother is 72 and alive and well. Brother age 44 and sister age 45 have "heart trouble", details are unavailable.

Medications: Wellbutrin 150 mg daily, Lipitor 10 mg daily, Remuron one-half tablet daily, and Tylenol w/Codeine. He also takes eye drops for glaucoma.

Fixed Payments

Qualifying Claimants who are notified by the Claims Administrator that their total MI or IS points are less than a specified amount shall have the option to receive a gross Fixed Payment of \$5,000 instead of the (likely much smaller) award they would receive if all appropriate risk factor and liability adjustments were made to their base point total. Qualifying Claimants eligible for the Fixed Payment who do not choose to receive the Fixed Payment shall receive de novo review of their claim by the Special Master. The Special Master shall award 0 to 5 points to each such MI claim, and shall award 0 to 1 point for each such IS claim, and the determination of the Special Master shall be final and non-appealable.

Extraordinary Injury Payments

Qualifying Claimants who would like their claim to be considered as an Extraordinary Injury may apply through their Primary Counsel to receive an Extraordinary Injury Payment ("EI Payment"). Such Qualifying Claimants may be eligible for an EI Payment if: (a) the Qualifying Claimant is not eligible for a Fixed Payment; and (b) the Qualifying Claimant submits records reflecting an injury that is not adequately reflected within the point grid; and/or (c) the Qualifying Claimant has specified, documented, economic damages of at least \$250,000. Such damages include the Qualifying Claimant's past or future out-of-pocket medical expenses and the Qualifying Claimant's past lost wages to the extent that such expenses or lost wages are the result of the Qualifying Claimant's heart attack or stroke and have neither been reimbursed nor are eligible for reimbursement from any other source.

Each Qualifying Claimant who qualifies for, and timely applies for, an EI Payment shall receive such a payment in an amount to be based on criteria to be determined by the Claims Administrator. Any such EI Payment shall be in addition to the Qualifying Claimant's Final Payment (see below). EI Payments for all Qualifying MI Claimants shall not in the aggregate exceed \$195 million; EI Payments for all Qualifying IS Claimants shall not in the aggregate exceed \$105 million. All proposed EI Payments shall be reduced pro rata if necessary to meet these restrictions.

Final Payments

After, and only after, (i) all Qualifying Claimants have completed the claims valuation process and all points awards have become final; and (ii) all possible Fixed Payments and Extraordinary Injury Payments have been determined; and (iii) all audits have been completed, the Claims Administrator shall determine the MI and IS Point Values.

The total gross value of each Qualifying MI and IS Claimant's claim can then be determined by multiplying the Qualifying Claimant's total number of points by the MI or IS Point Value, as appropriate. The final gross payment to be made to each such

DESCRIPTION OF SETTLEMENT AGREEMENT

Merck & Co. ("Merck") has entered into a Settlement Agreement ("Agreement") with certain plaintiffs' counsel ("Negotiating Plaintiffs' Counsel") in order to establish a nationwide settlement program to resolve the claims of certain individuals who have suffered a heart attack, stroke, or sudden cardiac death resulting from their use of Vioxx (the "Vioxx Claimant(s)").

Activation of the Settlement Program

In order for claims to be paid under the Settlement Program, counsel representing Vioxx Claimants must file with the relevant court no later than January 15, 2008, a Registration Affidavit for every Vioxx client they represent as primary counsel, regardless of whether the client suffered a heart attack, ischemic stroke, or sudden cardiac death resulting from Vioxx. The Registration Affidavit will contain basic information about each client and the injury the client alleges.

After the Registration Affidavits have been submitted, the Claims Administrator will calculate the total number of Vioxx Claimants that are eligible to participate ("Eligible Claimants") in the Settlement Program. A Vioxx Claimant will be considered eligible to participate in the Settlement Program if:

- the Claimant has a filed Vioxx lawsuit pending in any jurisdiction or a Vioxx claim that was tolled under the Tolling Agreement established by the MDL Court; and
- the Claimant alleged in his/her lawsuit or tolling paperwork that the Claimant (or the Deceased or minor for whom the Claimant is the Legal Representative) suffered a heart attack, ischemic stroke, or sudden cardiac death as a result of Vioxx ingestion.

In order for the Settlement Program to be activated and for Merck to be required to fund the settlement, at least 85% of all Eligible Claimants must agree to participate in the Settlement Program. All documents necessary for a Vioxx Claimant to participate in the Settlement Program must be submitted to the Claims Administrator by March 1, 2008. Sufficient numbers of Eligible Claimants from each of the following categories must agree to participate in the Settlement Program in order for the Program to be Activated:

- Vioxx Claimants registered as alleging a heart attack or myocardial infarction or qualifying myocardial infarction or sudden cardiac death ("MI Eligible");
- Vioxx Claimants registered as alleging a stroke or other qualifying ischemic cerebrovascular event ("IS Eligible");
- Vioxx Claimants registered as alleging use of Vioxx for more than 12 months prior to a qualifying heart attack ("MI") or qualifying stroke ("IS");
- Vioxx Claimants registered as alleging death as an injury.